



Building Industry Legal Defense Foundation

via U.S. mail and electronic mail

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Re: **Comments on Proposed Administrative Civil Liability  
Order No. R5-2013-0519**

Dear Mr. Landau and Mr. Pulupa:

Building Industry Legal Defense Foundation ("BILD") writes this letter to respectfully lodge its strong concerns about the wisdom the proposed \$10 per gallon penalty that is proposed to be levied in the above-referenced penalty action. For the reasons discussed below, BILD believes that the \$10 per gallon penalty would constitute a travesty of justice given the lower penalty limit (\$2 per gallon) that generally applies to high-volume discharges as set forth in the State Water Board's Enforcement Policy (the "Policy"). Moreover, it would seemingly be an abuse of discretion, given the lack of any colorable reasoning for departing from the \$2 per gallon maximum set forth in the Policy for high-volume discharges, including high-volume stormwater discharges (concerning which the discharger is often a hapless victim).

The Building Industry Legal Defense Foundation is a non-profit mutual benefit corporation and wholly-controlled affiliate of the Building Industry Association of Southern California, Inc. ("BIA/SC"). BIA/SC, in turn, is a non-profit trade association representing nearly 1,000 member companies. The mission of BIA/SC is to promote and protect the building industry to ensure its members' success in providing homes for all Southern Californians. BILD's purposes are, among others, to monitor legal and regulatory developments and to intervene when appropriate to improve the legal climate for BIA/SC's members and the construction industry in Southern California.

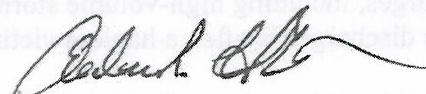


Here, the Regional Water Quality Control Board has proposed a penalty of \$10 per gallon for the alleged violations indicated in ACL R5-2013-0519 against Donahue Schriber. The amount per gallon proposed is inconsistent with the maxima amounts set forth in the Policy, which establishes a generally-applicable maximum penalty for violations resulting in high-volume discharges, including those of stormwater, of no more than \$2 per gallon, subject to rational exception in appropriate circumstances. Specifically, regional boards may depart from the \$2 per gallon maximum for high-volume discharges, and a penalty of up to \$10 per gallon can be imposed, only "where the [former] results in an inappropriately small penalty, such as dry weather [i.e., non-stormwater, wholly-anthropogenic] discharges or small volume discharges that [actually] impact beneficial uses...."

In the matter at hand, there occurred a paradigmatic high-volume stormwater discharge due to an unusually impactful storm event. Donahue Schriber caused no dry-weather discharge, and was itself a victim of the large storm, which – given its intensity – understandably overcame Donahue Schriber's storm water management controls. In short, there is no unusual culpability of the type would justify departing from the high-volume maximum penalty of \$2 per gallon. If the Regional Board were to adhere to the \$2 per gallon maximum applicable to high-volume discharges, the penalty will be extremely large as is: \$153,226.

BILD submits that, if the Regional Board can ignore the \$2 per gallon maximum penalty limitation for high-volume discharges in this relatively innocuous situation, then the high-volume discharge limitation could be rendered entirely meaningless. It exists for a reason, which is largely to account for the very large volumes of stormwater which results from large storm events. BILD respectfully urges the Regional Board to reconsider the penalty and adhere to the \$2 per gallon maximum penalty limitation for high-volume discharges.

Respectfully submitted,



Andrew R. Henderson  
General Counsel